

59th Republican Ward Executive Committee

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Joseph L. Messa, Esq., Ward Leader • Hon. Peter J. Wirs, Chairman

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2006 SEP 22 A 8:42

Lawrence Norton, Esq.
Federal Election Commission
Office of the General Counsel
999 E Street, N.W.
Washington, D.C. 20463

Supplement to
AOR 2006-28

Atten: Amy Rothstein, Esq.
Esa Sferra, Esq.

**RE: RESPONSE TO SEPTEMBER 19, 2006 TELEPHONE DISCUSSION
PER AOR 2006-28.**

Counselors:

In our discussion, you recommended that we Item No. 2 of AO 1978-9, which upon re-reading the same,¹ we are constrained to draw the inference that you are of mind that a "Ward Executive Committee" is an auxiliary body of the county (city) committee, which as noted is a creature of statute. 25 P.S. § 2837. However, as explained more fully in our formal (August 23, 2006) Advisory Opinion Request at pp. 6-7, such conclusion would be a material fallacy, specifically that of false analogy. The "degree of similarity is always the crucial inquiry," Aldisert, *LOGIC FOR LAWYERS, A GUIDE TO CLEAR LEGAL THINKING* (3d ed.) 1997, at p. 94. In other words, if it walks like a duck... Such is the readily evident reasoning in the two Pennsylvania decisional laws cited, *In re Freeman*, 115 Pa.Cmwlth. 300, 309 n. 6, 540 A.2d 606, 610 n. 6 (1988) and *Bentman v. Seventh Ward Democratic Executive Committee*, 421 Pa. 188, 196, 218 A.2d 261, 266 (1966). Being much more experienced with the reality of Pennsylvania politics than the FEC, the Pennsylvania courts did not question that ward executive committees had standing and moreover required in the one case at bar, judicial intervention. If the ward executive committees were "auxiliary bodies" as the Commission may apprehend, the Pennsylvania courts were wrong and should have remanded the matter to the superior body, in the instant case, the city committee. A ruling inapposite to Pennsylvania decisional law would be improvident in that the Commission would be preempting Pennsylvania law as to what constitutes a political party committee, in violation of *CSX v. Easterbrook*, 507 U.S. 648 (1993), because there is no need for conflict preemption.

¹We assume that since you had additional questions, we may respond as in the past by reducing the same to writing, notwithstanding the 10-day comment period expired as of Monday. In any respect, we are merely reiterating what was already stated in our formal AOR, hence nothing new is being raised.

First, 2 U.S.C. § 453 preempts state law only to the extent with “respect to election to Federal office,” and the Pennsylvania decisional law interpreting what constitutes a political party committee does not stand as an obstacle to as an obstacle to FECA as amended by BRCA. *See e.g. Arons v. New Jersey State Board of Education*, 842 F.2d 58 (1968) (If Congress, does not entirely displace state regulation over the matter, state law is preempted to the extent it actually conflicts with the federal law or stands as an obstacle to achieving the full purposes and objectives of Congress) citing *Silkwood v. Kerr-McGree*, 464 U.S. 238 (1984).

We moreover cautioned in our August 23rd AOR not to be misled by the reality that the Pennsylvania Election Code is, virtually speaking in two parts. The first part was originally enacted in 1933, over seventy years ago, where you find the provisions relative to the creation of the state and county committees. The second part, specifically the campaign finance reporting law, was initially enacted in 1978. While there is no reference to ward executive or municipal committees in the former, there is explicit reference to them in the latter under 25 P.S. § 3243, which explicitly acknowledges the existence of “any state, county, city, borough, township, ward or other regularly constituted party committee of any political party. . . .” Regrettably, Pennsylvania has had a long history of piecemeal legislation,² and any reliance on absence of a provision under the old portion of the Election Code would be a crabbed reading, particularly in light of the provision of the new portion of the Election Code.

A re-reading of AO 1978-9 also brought to our attention the following: “There is a demonstrable bias within the Act in favor of political party organizations. See 2 U.S.C. SS 441a(d). Congress consciously sought to strengthen the role of parties in the electoral process. The Commission, therefore, will avoid rulings which unjustifiably discourage party activity, especially at the local level. Furthermore, Congress has articulated in other parts of the Act a desire to place the fewest restrictions and administrative burdens on those groups that are least likely to need them, i.e., local political organizations which are either primarily involved in State and/or local elections or which are active in campaigns for Federal office, but on a very limited or seasonal basis. Consequently, the Commission has broad discretion * * *.” (footnotes omitted).

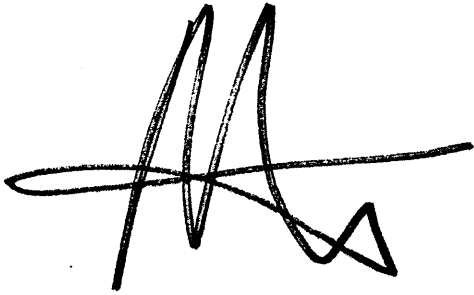
²*See e.g. Commonwealth v. Smerechenski*, 322 Pa.Super. 1, 468 A.2d 1129 (1983) complaining about the Pennsylvania General Assembly enacting piecemeal legislation. In many instances, there are whole areas where government operates on common law. The office of the Pennsylvania Sheriff has been in existence since colonial times in each of the state’s 67 counties. Instead there is no statute governing Sheriffs, only common and decisional law. *Venneri v. Allegheny County*, 12 Pa.Cmwlth. 517, 316 A.2d 120 (1974) (“Quite candidly, however, we are somewhat dismayed by our research disclosure that the Legislature has never chosen to enact legislation delineating the general powers, duties and responsibilities of the sheriff”).

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As to the expedited treatment request, we tell you nothing new that a response is required with due regard "for the convenience and necessity of the parties * * *." 5 U.S.C. § 555(b). Even *arguendo*, the Commission was to rule subsequent to the October 23rd Oktoberfest of Germantown, to wait until 12 hours before the polls open on Election Day defeats the necessity of the 59th Republican Ward Executive Committee's prayer for relief.

Accordingly, if we keep the matter as simplified as the facts require it to be, we can so no reason why the Commission would not be able to issue the Advisory Opinion no later than October 8th. Again, anything I can do to be of assistance, please let me know.

Respectfully, etc.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a horizontal line and a small, sharp downward stroke.